

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: Kemmerer, Elizabeth
)	
David BOTSTEIN, <i>et al.</i>)	Art Unit: 1646
)	
Application Serial No. 09/990,443)	Confirmation No: 2356
)	
Filed: November 14, 2001)	Attorney's Docket No. GNE-2730 P1C12
)	
For: SECRETED AND TRANSMEMBRANE)	Customer No. 77845
POLYPEPTIDES AND NUCLEIC)	
ACIDS ENCODING THE SAME)	

FILED VIA EFS December 31, 2008

**RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF AND AMENDMENT
OF APPELLANTS' BRIEF ON APPEAL.**

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

On October 19, 2007, the Examiner made a Final Rejection to pending Claims 119-123. A Notice of Appeal was filed on January 22, 2008 and an Appeal Brief was subsequently filed on April 22, 2008. An Examiner's Answer was mailed June 12, 2008. Appellant's Reply Brief was filed on August 12, 2008.

A Notification of Non-Compliant Appeal Brief was mailed December 11, 2008, which stated that the Appeal Brief did not fit with the criteria of 37 C.F.R. §41.37(c). Specifically, the Examiner asserts that the 'Related Appeals and Interferences' section of the Brief is incomplete for not identifying Application Serial No. 09/941,992. The Examiner alleges that the present application is a continuation of 09/941,992, thus making it related.

Appellants respectfully submit that, although 09/941,992 was identified in the priority claim of the instant application, the 09/941,992 application is directed to patentable subject matter distinct from the instant application. That is, the 09/941, 992 application claims

polypeptides related to PRO341; whereas the claims pending in the current application are directed to antibodies that specifically bind PRO1009 polypeptides.

Nevertheless, without acquiescing to the Examiner's assertion, and merely to expedite prosecution of the instant application, Appellants submit herewith, on a separate sheet, a revised version of the "Related Appeal and Interferences" section (ii) of the Appeal Brief. The Board is requested to refer to the Appeal Brief submitted in its entirety dated April 22, 2008. This response to Non-Compliant Brief is timely filed within the one month period set for response.

II. RELATED APPEALS AND INTERFERENCES

The claims pending in the current application are directed to a polypeptide referred to herein as "PRO1009". There exist three related patent applications, (1) U.S. Patent Application Serial No. 09/991,181, now Patent No. 6,913, 919, issued 07-05-2005 (containing claims directed to nucleic acids encoding PRO1009 polypeptides), (2) U.S. Patent Application Serial No. 09/993,687, filed November 14, 2001 (containing claims directed to PRO1009 polypeptides) and (3) U.S. Patent Application Serial No. 09/941,992, filed August 28, 2001 (containing claims directed to PRO341 polypeptides). Related U.S. Patent Application Serial Nos. 09/993,687 and 09/941,992 are also under final rejection by the same Examiner and appeals are being pursued independently and concurrently herewith.

CONCLUSION

For the reasons given above, Appellants submit that the Appeal Brief submitted with regards to the instant application meets the requirements of 37 C.F.R. §41.37(c).

Accordingly, Appellants hereby request consideration by the Board of Patent Appeals and Interferences.

Please charge any additional fees, including fees for additional extension of time, or credit overpayment to Deposit Account No. **50-4634** (referencing Attorney's Docket No. **123851-181895 (GNE-2730-P1C12)**).

Respectfully submitted,

Date December 31, 2008

By: 
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